

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
BECKLEY DIVISION**

DANIEL HONAKER,

Plaintiff,

v.

**RALPH W. JUSTUS,
individually as a member of the
West Virginia State Police,
CHRIS KANE,
individually as a member of the
West Virginia State Police, and
ROBERT DANIEL,
individually as member of the
West Virginia State Police,**

Defendants.

Civil Action No. 5:18-cv-01376

COMPLAINT

COMES NOW, Plaintiff Daniel Honaker, by counsel, and for his Complaint states and alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331 and 1343 and under this Court's authority to decide pendent state law claims.

2. Plaintiff files this Complaint, pursuant to 42 U.S.C. § 1983, alleging violations of his constitutional rights. Specifically, Plaintiff alleges that his rights under the Fourth Amendment to the United States Constitution and under Article III, Sections 6 and 10 of the West Virginia Constitution were violated by Defendant Ralph W. Justus when he used excessive and unlawful force during the course of the detainment and arrest of Plaintiff on March 24, 2017 in Buchanan County, Virginia, and McDowell County, West Virginia.

3. Venue is proper because one or more of the above-named Defendants resides within the Southern District of West Virginia, Beckley Division.

PARTIES

4. Plaintiff Daniel Honaker (hereinafter “Plaintiff”) was at all times relevant hereto a resident of Buchanan County, Virginia.

5. Defendant Ralph W. Justus (hereinafter “Trooper Justus”) was at all times relevant hereto a member of the West Virginia State Police and was at all times relevant hereto acting under color of law and within the scope of his employment. Trooper Justus, having an address of 850 Virginia Avenue, Welch, McDowell County, West Virginia, is sued only in his individual capacity.

6. Defendant Chris Kane (“Trooper Kane”) was at all relevant times hereto a member of the West Virginia State Police and was at all times relevant hereto acting under color of law and within the scope of his employment. Upon information and belief, Trooper Kane was a supervisor of Trooper Justus, believed to be stationed in the Welch detachment of the West Virginia State Police. Trooper Kane, having an address of P.O. Box 3051, Bluefield, Mercer County, West Virginia, is sued only in his individual capacity.

7. Defendant Robert Daniel (“Trooper Daniel”) was at all relevant times hereto a member of the West Virginia State Police and was at all times relevant hereto acting under color of law and within the scope of his employment. Upon information and belief, Trooper Daniel was a supervisor of Trooper Justus, believed to be stationed in the Welch detachment of the West Virginia State Police. Trooper Daniel, having an address of 128 Beckett Drive, Crab Orchard, Raleigh County, West Virginia, is sued only in his individual capacity.

8. Trooper Justus has a long and well-documented track record of using excessive force while in the line of duty as a West Virginia State Trooper, including beating, torturing, and

sexually assaulting numerous West Virginia citizens; the very same West Virginia citizens he was supposed to, according to the West Virginia State Police motto, serve with “honor, bravery, and professionalism.”

9. Trooper Justus has been the subject of numerous lawsuits, criminal investigations, and, upon information and belief, a United States Department of Justice investigation.

10. Defendants Trooper Kane and Trooper Daniel, as supervisors of Trooper Justus, were fully aware of these numerous other incidents of excessive force and violence perpetrated by, or participated in, by Trooper Justus, yet did nothing to hold him accountable. In fact, Trooper Kane and Trooper Daniel turned a blind eye to the unlawful conduct of Trooper Justus, thereby allowing him to continue to repeatedly use excessive force and violence toward other individuals, including Plaintiff.

11. Specifically, Trooper Kane and Trooper Daniel had actual and/or constructive knowledge of the following incidents of excessive force, violence, and brutality by Trooper Justus while in the line of duty (incidents that predate the incident in the present case), but failed to hold him accountable:

- The beating and torturing of Antonia Toliver in December 2014;
- The beating of Aaron Akers in March 2015;
- The beating, hospitalization, and racial abusing of Michael Ferguson in April 2015;
- and
- The beating and hospitalization of Jamie Justus in September 2016.

12. Only after Trooper Justus was accused of sexually assaulting a woman on March 24, 2017 (Plaintiff’s then-girlfriend), was he finally placed on paid administrative leave by the West Virginia State Police.

13. Thus, despite actual and/or constructive knowledge that Trooper Justus was repeatedly engaged in unlawful behavior while in the line of duty as a West Virginia State Trooper, the West Virginia State Police, through Troopers Kane and Daniel, failed to adequately discipline and/or supervise Trooper Justus, thereby knowingly allowing him to continue to endanger the West Virginia citizens he was sworn to protect, including Plaintiff.

14. This Complaint was filed after Plaintiff complied with W. Va. Code § 55-17-3 by sending a certified letter to Attorney General Patrick Morrissey and West Virginia State Police Superintendent, Colonel J. L. Cahill on August 24, 2018.

15. Pursuant to W. Va. Code § 55-17-3, a copy of this Complaint was mailed to Attorney General Patrick Morrissey after it was filed.

16. Defendants are sued up to the limits of the insurance policy which provides liability coverage for their actions and omissions.

FACTS

17. Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 16 as though fully set forth herein.

18. Upon information and belief, on the evening of March 24, 2017, Trooper Justus went to the home of Plaintiff's then-girlfriend in Buchanan County, Virginia to arrest Plaintiff for a parole violation in Virginia.

19. Trooper Justus kicked down the front door of the home, entered the bedroom where Plaintiff and his girlfriend were sleeping, and drug Plaintiff out of bed.

20. Trooper Justus then threw Plaintiff on the living room floor and told Plaintiff to put his hands behind his back or he would "blow your teeth out."

21. Plaintiff was unarmed and did not resist arrest.

22. After Plaintiff's hands were cuffed behind his back, and with no justification or provocation, Trooper Justus brutally beat Plaintiff by kicking and punching him in the head, face, and torso.

23. While Plaintiff was being beaten, he begged Trooper Justus to "please stop," while his then-girlfriend, who witnessed the incident, cried "please don't hurt him."

24. After the beating, Trooper Justus took Plaintiff out of the house and placed him in a West Virginia State Police cruiser.

25. Later that evening, Trooper Justus returned to the house and sexually assaulted Plaintiff's then-girlfriend.

26. After he was taken from the house, Plaintiff was transported to the West Virginia State Police detachment in Welch, West Virginia, where he was taken to a back room along the side of the building.

27. Inside this back room, Trooper Justus, now wearing black gloves (believed to be SAP gloves with weighted lead or steel knuckles), told Plaintiff, "you know we went to school together and grew up around each other, but there are consequences to every man's actions. You understand that, right?"

28. Plaintiff then asked Trooper Justus, "are you going to whoop my ass again?", to which Trooper Justus responded, "you're goddamned right."

29. Following that exchange, for the next ten or fifteen minutes, Trooper Justus again brutally punched, kicked, and otherwise beat Plaintiff (who was still handcuffed) in the head, face, and torso.

30. As a result of these violent beatings at the hands of Trooper Justus, Plaintiff suffered extensive physical injuries, including but not limited to, multiple broken ribs and countless bruises

and abrasions. Plaintiff's broken ribs are now badly deformed and protruding out from his body. He is still seeking medical treatment for his painful injuries, which are permanent in nature.

31. At no point during his detainment and arrest was Plaintiff armed or suspected of being armed.

32. At no point during his detainment and arrest did Plaintiff attack or assault Trooper Justus, nor did Plaintiff at any point resist arrest.

33. At no point during his detainment and arrest would an objectively reasonable officer believe Plaintiff posed a threat to the safety of Trooper Justus or anyone else.

COUNT I – EXCESSIVE FORCE UNDER 42 U.S.C. §1983
(Trooper Justus)

34. Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 33 as though fully set forth herein.

35. Trooper Justus, while acting under color of law and within the scope of his employment, violated Plaintiff's constitutional rights by using excessive and unlawful force, as described hereinabove, during the detainment and arrest of Plaintiff on March 24, 2017, resulting in serious bodily injuries.

36. At all times relevant hereto, Trooper Justus was a West Virginia State Trooper.

37. The actions of Trooper Justus violated the constitutional rights guaranteed to Plaintiff under the Fourth Amendment to the United States Constitution.

38. The actions of Trooper Justus were not taken in good-faith, were objectively unreasonable, and were in violation of clearly established law.

39. At all time relevant hereto, Trooper Justus did not have a reasonable fear of imminent bodily harm from Plaintiff, nor a reasonable belief that any other person was in danger of imminent bodily harm from Plaintiff.

40. Trooper Justus' brutal acts were unlawful, unreasonable, and unjustified, as Plaintiff was unarmed, not resisting arrest, and posed no immediate threat to the safety of Trooper Justus or anyone else.

41. As a direct and proximate result of Trooper Justus' unreasonable, unjustified, and unconstitutional beating, Plaintiff suffered severe, permanent, and debilitating injuries, and will seek compensation for: past and future medical expenses and other economic and noneconomic damages; pain and suffering both in the past and in the future; an impairment of the capacity to enjoy life, both in the past and in the future; annoyance, aggravation, inconvenience, and mental anguish, both in the past and in the future.

42. In addition to these compensatory damages, Plaintiff will also seek to recover, under 42 U.S.C. § 1983, attorneys' fees and cost incurred during the course of this litigation.

43. The actions of Trooper Justus against Plaintiff were reprehensible, willful and wanton, malicious, and in blatant and intentional disregard for the rights owed to Plaintiff, thereby justifying an award of punitive damages, to the extent such damages are recoverable under Trooper Justus' applicable insurance policy.

COUNT II – SUPERVISOR LIABILITY UNDER 42 U.S.C. § 1983
(Troopers Kane and Daniel)

44. Plaintiff hereby incorporates by reference the allegations made in paragraphs 1 through 43 as though fully set forth herein.

45. Troopers Kane and Daniel, West Virginia State Troopers who supervised Trooper Justus, had actual and/or constructive knowledge that Trooper Justus was engaged in repeated and pervasive acts of excessive force and violence, while acting under color of law and within the scope of his employment as West Virginia State Trooper, and thereby posed an unreasonable risk of injury to citizens like Plaintiff.

46. Troopers Kane and Daniel's response to this knowledge of the unlawful, violent, and unconstitutional acts of Trooper Justus was so inadequate as to show a deliberate indifference, or tacit authorization, of such abhorrent practices.

47. As a direct and proximate result of Troopers Kane and Daniel's actions and inactions, Plaintiff suffered severe, permanent, and debilitating injuries, and will seek compensation for: past and future medical expenses and other economic and noneconomic damages; pain and suffering both in the past and in the future; an impairment of the capacity to enjoy life, both in the past and in the future; annoyance, aggravation, inconvenience, and mental anguish, both in the past and in the future.

48. In addition to these compensatory damages, Plaintiff will also seek to recover, under 42 U.S.C. § 1983, attorneys' fees and cost incurred during the course of this litigation.

49. The actions of Troopers Kane and Daniel were reprehensible, willful and wanton, malicious, and in blatant and intentional disregard for the rights owed to Plaintiff, thereby justifying an award of punitive damages, to the extent such damages are recoverable under their applicable insurance policy(s).

COUNT III – STATE CONSTITUTIONAL VIOLATIONS
(Trooper Justus)

50. Plaintiff hereby incorporates by reference the allegations made in paragraphs 1 through 49 as though fully set forth herein.

51. Trooper Justus, while acting under color of law and within the scope of his employment as a West Virginia State Trooper, violated Plaintiff's constitutional rights by using excessive and unlawful force, as described hereinabove, during the detainment and arrest of Plaintiff on March 24, 2017, resulting in serious bodily injuries.

52. Count III alleges a constitutional tort action under the West Virginia Constitution, pursuant to the common law of West Virginia, and specifically is not filed pursuant to 42 U.S.C. § 1983 or any other related federal statute.

53. The actions of Trooper Justus violated the constitutional rights guaranteed to Plaintiff under Article III, Sections 6 and 10 of the West Virginia Constitution.

54. The actions of Trooper Justus also violated the constitutional rights guaranteed to Plaintiff under the Fourth Amendment to the United States Constitution.

55. The actions of Trooper Justus were not taken in good-faith, were objectively unreasonable, and were in violation of clearly established law.

56. Trooper Justus' brutal acts were unlawful, unreasonable, and unjustified, as Plaintiff was unarmed, not resisting arrest, and posed no immediate threat to the safety of Trooper Justus or anyone else.

57. As a direct and proximate result of Trooper Justus' unreasonable, unjustified, and unconstitutional beating, Plaintiff suffered severe, permanent, and debilitating injuries, and will seek compensation for: past and future medical expenses and other economic and noneconomic damages; pain and suffering both in the past and in the future; an impairment of the capacity to enjoy life, both in the past and in the future; annoyance, aggravation, inconvenience, and mental anguish, both in the past and in the future.

58. The actions of Trooper Justus against Plaintiff were reprehensible, willful and wanton, malicious, and in blatant and intentional disregard for the rights owed to Plaintiff, thereby justifying an award of punitive damages, to the extent such damages are recoverable under Trooper Justus' applicable insurance policy.

COUNT IV – BATTERY
(Trooper Justus)

59. Plaintiff hereby incorporates by reference the allegations made in paragraphs 1 through 58 as though fully set forth herein.

60. Trooper Justus committed battery upon Plaintiff, proximately causing severe and debilitating bodily injuries.

61. As a direct and proximate result of Trooper Justus' brutal, unprovoked, and unjustified beating, Plaintiff suffered permanent and debilitating injuries, and will seek compensation for: past and future medical expenses and other economic and noneconomic damages; pain and suffering both in the past and in the future; an impairment of the capacity to enjoy life, both in the past and in the future; annoyance, aggravation, inconvenience, and mental anguish, both in the past and in the future.

62. The actions of Trooper Justus against Plaintiff were reprehensible, willful and wanton, malicious, and in blatant and intentional disregard for the rights owed to Plaintiff, thereby justifying an award of punitive damages, to the extent such damages are recoverable under Trooper Justus' applicable insurance policy.

COUNT V – NEGLIGENCE
(Trooper Justus)

63. Plaintiff hereby incorporates by reference the allegations made in paragraphs 1 through 62 as though fully set forth herein.

64. At all times relevant hereto, Trooper Justus owed Plaintiff a duty of care.

65. Trooper Justus, while acting within the scope of his employment as a West Virginia State Trooper, breached his duty of care to Plaintiff.

66. As a direct and proximate result of Trooper Justus' breach of his duty of care, Plaintiff suffered severe and debilitating bodily injuries.

67. As a direct and proximate result of Trooper Justus' brutal, unprovoked, and unjustified beating, Plaintiff suffered permanent and debilitating injuries, and will seek compensation for: past and future medical expenses and other economic and noneconomic damages; pain and suffering both in the past and in the future; an impairment of the capacity to enjoy life, both in the past and in the future; annoyance, aggravation, inconvenience, and mental anguish, both in the past and in the future.

68. The actions of Trooper Justus against Plaintiff were reprehensible, willful and wanton, malicious, and in blatant and intentional disregard for the rights owed to Plaintiff, thereby justifying an award of punitive damages, to the extent such damages are recoverable under Trooper Justus' applicable insurance policy.

COUNT VI – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

69. Plaintiff hereby incorporates by reference the allegations made in paragraphs 1 through 68 as though fully set forth herein.

70. The brutal beating of Plaintiff at the hands of Trooper Justus was atrocious, intolerable, and so extreme and outrageous as to exceed the bounds of decency.

71. Trooper Justus acted with intent to inflict emotional distress or acted recklessly when it was certain or substantially certain that emotional distress would result from his outrageous conduct.

72. Trooper Justus' heinous actions caused Plaintiff to suffer severe emotional distress.

73. The emotional distress was so severe, no reasonable person could be expected to endure it.

74. As a direct and proximate result of Trooper Justus' brutal, unprovoked, and unjustified beating, Plaintiff suffered severe emotional distress; mental and emotional pain and suffering, both in the past and in the future; an impairment of the capacity to enjoy life, both in the past and in the future; annoyance, aggravation, inconvenience, and mental anguish, both in the past and in the future.

75. The actions of Trooper Justus against Plaintiff were reprehensible, willful and wanton, malicious, and in blatant and intentional disregard for the rights owed to Plaintiff, thereby justifying an award of punitive damages, to the extent such damages are recoverable under Trooper Justus' applicable insurance policy.

WHEREFORE, Plaintiff demands judgment in his favor against Defendants in an amount to be proven at trial, together with pre-judgment and post-judgment interest; for all damages recoverable under law; for punitive damages; for his attorney's fees, expenses, and costs of litigation; and for such other and further relief this Honorable Court deems just and proper.

PLAINTIFF DEMANDS A TRIAL BY JURY.

DANIEL HONAKER
By Counsel

/s/ Russell A. Williams

Eric J. Buckner (WVSB # 9578)
Russell A. Williams (WVSB # 12710)
Katz, Kantor, Stonestreet & Buckner, PLLC
112 Capitol Street, Suite 100
Charleston, WV 25301
(304) 431-4053
rwilliams@kksblaw.com

UNITED STATES DISTRICT COURT

for the

Southern District of West Virginia

Daniel Honaker

Plaintiff(s)

v.

Ralph W. Justus, individually as a member of
the WV State Police, Chris Kane, individually as a
member of the WV State Police, and Robert Daniel,
individually as a member of the WV State Police

Defendant(s)

Civil Action No. 5:18-cv-01376

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Ralph W. Justus
850 Virginia Avenue
Welch, West Virginia 24801

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Eric J. Buckner, Esq.
Russell A. Williams, Esq.
Katz, Kantor, Stonestreet & Buckner, PLLC.
112 Capitol Street, Suite 200
Charleston, West Virginia 25301

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 5:18-cv-01376

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of West Virginia

Daniel Honaker

Plaintiff(s)

v.

Ralph W. Justus, individually as a member of
the WV State Police, Chris Kane, individually as a
member of the WV State Police, and Robert Daniel,
individually as a member of the WV State Police

Defendant(s)

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)
)
)
) Civil Action No. 5:18-cv-01376
)
)
)
)
)
)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Chris Kane
P. O. Box 3051
Bluefield, West Virginia 24701

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Eric J. Buckner, Esq.
Russell A. Williams, Esq.
Katz, Kantor, Stonestreet & Buckner, PLLC.
112 Capitol Street, Suite 200
Charleston, West Virginia 25301

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 5:18-cv-01376

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This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____

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Server's signature

Printed name and title

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Additional information regarding attempted service, etc:

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UNITED STATES DISTRICT COURT

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Plaintiff(s)

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Ralph W. Justus, individually as a member of
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member of the WV State Police, and Robert Daniel,
individually as a member of the WV State Police

Defendant(s)

Civil Action No. 5:18-cv-01376

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Robert Daniel
128 Beckett Drive
Crab Orchard, West Virginia 25827

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Eric J. Buckner, Esq.
Russell A. Williams, Esq.
Katz, Kantor, Stonestreet & Buckner, PLLC.
112 Capitol Street, Suite 200
Charleston, West Virginia 25301

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 5:18-cv-01376

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☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
Daniel Honaker

(b) County of Residence of First Listed Plaintiff Buchanan
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Eric J. Buckner and Russell A. Williams; Katz, Kantor, Stonestreet & Buckner, PLLC., 112 Capitol Street, Suite 200, Charleston, WV 25301; 304-431-4050

DEFENDANTS

Ralph W. Justus, individually as a member of the WV State Police, Chris Kane, individually as a member of the WV State Police, and Robert Daniel, individually as a member of the WV State Police

County of Residence of First Listed Defendant McDowell
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. § 1983

Brief description of cause:

violations of constitutional rights when Defendant used excessive force during the detainment of Plaintiff

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION DEMAND \$
UNDER RULE 23, F.R.Cv.P.

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

07/23/2018

SIGNATURE OF ATTORNEY OF RECORD

/s/Russell A. Williams

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.